

STATEWIDE FEE GUIDELINES
For Assessing the Reasonableness
of
FIDUCIARY, GUARDIAN *AD LITEM*,
AND ATTORNEY COMPENSATION
In Title 14 Proceedings

Introduction:

These guidelines are intended to assist the court, fiduciaries, guardians *ad litem*, attorneys, parties, and interested persons in evaluating whether compensation is reasonable, since professional services must be tailored to the specific circumstances of each engagement, and a one-size-fits-all regulatory approach to professional services and compensation is not practical and not in the best interest of each unique ward, protected person, estate, and trust. Although such regulatory approaches have the attraction of apparent simplicity, the result can be increased administrative costs, diminished quality of professional services, or underserved populations, such that reasonable compensation is best determined on a case-by-case basis, while applying consistent compensation guidelines.

Since every case is different, however, and because every fiduciary, guardian *ad litem*, and attorney has unique qualifications, these fee guidelines set forth compulsory billing standards, points of reference, and general compensation factors, but not predetermined times to perform specific tasks, predetermined rate schedules, or fees as a percent of an estate. Therefore, following compliance with compulsory billing standards, the court shall weigh the totality of the circumstances and, in its discretion, assign more or less weight to any given points of reference or compensation factors as it deems just and reasonable.

Scope:

These guidelines only apply to the compensation of court-appointed fiduciaries, specifically guardians, conservators, and personal representatives, licensed and unlicensed, as well as guardians *ad litem* and attorneys who are paid by a ward, protected person, estate, or trust (collectively referred to in the *Guidelines* as an “Estate”), but shall not apply to compensation paid by a trust or decedent’s estate, if compensation is specified or set forth in the relevant trust or testamentary instrument. These fee guidelines do not apply when the fees are not paid by the Estate, such as court-appointed counsel who are paid by the court.

Guidelines:

1. Reasonable compensation. Fiduciaries, guardians *ad litem*, and attorneys (collectively referred to in the *Guidelines* as a “Professional”) are entitled to reasonable compensation for the services they render in furtherance of the best interest of the Estate, which results in compensation that is fair, proper, just, moderate, suitable under the circumstances, fit, appropriate to the end in view, and timely paid, consistent with the following guidelines. The right to receive compensation may be limited by applicable statutes.
2. Compulsory billing standards. Unless otherwise ordered by the court, compensation and reimbursement shall meet the following standards:
 - a. All fee petitions shall comply with Rule 33 of the *Arizona Rules of Probate Procedure*.
 - b. All hourly billing shall be in an increment to the nearest 1/10 of an hour, with no minimum billing unit in excess of 1/10 of an hour. No “value billing” for services rendered is permitted, rather than the actual time expended.
 - c. “Block billing” is not permitted; block billing occurs when a timekeeper provides only a total amount of time spent working on multiple tasks, rather than an itemization of the time expended on a specific task.
 - d. Necessary travel time and waiting time may be billed at 100% of the normal hourly rate, except for time spent on other billable activity, and in-state mileage is not reimbursed; travel time and waiting time are not necessary when the service can be more efficiently rendered by correspondence or electronic communication, e.g. telephonic court hearings.
 - e. Billable time that benefits multiple clients, including travel and waiting time, shall be appropriately apportioned between each client.
 - f. Billable time does not include time spent on billing or accounts receivable activities, including time spent preparing itemized statements of work performed, copying, or distributing statements; however, time spent drafting the additional documents that are required by court order, rule, or statute, including any related hearing, is billable time. The court shall determine the reasonable compensation, if any, in its sole discretion, concerning any contested litigation over fees or costs.
 - g. Billable time does not include internal business activities of the Professional, including clerical or secretarial support to the Professional.

- h. The hourly rate charged for any given task shall be at the authorized rate, commensurate with the task performed, regardless of who actually performed the work, but clerical and secretarial activities are not separately billable from the Professional.

Example: an attorney can only bill an attorney rate when performing services that require an attorney, but a paralegal rate when performing paralegal services, a fiduciary rate when performing fiduciary services, no charge when performing secretarial or clerical services, etc.

Example: a fiduciary can only bill a fiduciary rate when performing services that require the skill level of the fiduciary, but a companion rate when performing companion services, a bookkeeper rate when performing bookkeeping and bill-paying services for a client, no charge when performing secretarial or clerical services, etc.

- i. Reasonable costs that are incurred in furtherance of the best interest of the Estate are reimbursable at actual cost, without “mark-up”. Examples of reimbursable costs include, but are not limited to: goods or services obtained for or consumed by the Estate; postage and shipping fees; deposition and transcript costs; fees charged by a process server; publication fees; expert witness fees; messenger costs; case-specific bonds; and electronic database fees charged by an outside vendor (e.g., Westlaw, LexisNexis, PACER, etc.) except for charges to research Arizona statutes, case law, and regulations. Reimbursable costs do not include any cost not specifically or directly associated with the delivery of goods or services to an identified Estate, i.e. overhead.
- j. Time and expenses for any misfeasance or malfeasance are not compensable.
- k. Time and expenses to correct or mitigate errors caused by the Professional, or their staff, are not billable to the Estate.
- l. Time or expenses to respond or defend against a regulatory complaint against the Professional are not billable to the Estate.
- m. A Professional may only charge interest on their unpaid compensation or unpaid reimbursement with court approval.

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3. Points of Reference. The Court shall consider points of reference when considering hourly rates and charges, as non-binding but informative and persuasive considerations, including:
- a. The prevailing average and median rates charged for comparable Professional services in the marketplace in which they practice, as periodically reported by the Administrative Office of the Courts. See Exhibit A, including a web address for updated information.
 - b. The number of billable hours and services rendered in comparable cases before that judicial officer.
 - c. As only a general benchmark, the common fiduciary services rendered in a routine guardianship or conservatorship engagement are as follows (the fiduciary should be prepared to provide a reasonable explanation for exceeding these benchmarks, upon request by the Court):
 - i. Routine bookkeeping, such as disbursements, bank reconciliation, data entry of income and expenditures, and mail processing: four (4) hours per month, at a commensurate rate for such services.
 - ii. Routine shopping: six (6) hours per month if ward is at home, and two (2) hour per month if ward in a facility, at a commensurate rate for such services.
 - iii. One routine personal visit per month by the fiduciary to the ward or protected person.
 - iv. Preparation of annual accounting and budget: five (5) hours per year.
 - v. Preparation of annual guardianship report: two (2) hours per year.
 - vi. Marshalling of assets and preparation of initial inventory: eighty (80) hours.
 - d. Not more than one attorney may bill for attending hearings, depositions, and other court proceedings on behalf of a client, nor bill for staff to attend, absent good cause.
 - e. Each fiduciary and guardian *ad litem* shall not bill for more than one person to attend hearings, depositions, and other court proceedings on behalf of an Estate, absent good cause. This provision does not preclude an attorney, who represents a fiduciary or guardian ad litem, from submitting a separate bill.

4. Compensation Factors. The court shall consider the following factors, as general principles, not rigid rules, when determining what constitutes reasonable compensation:
- a. The request for compensation in comparison to the previously disclosed basis for fees, any prior estimate by the Professional, and any court order; [refine after legislation is adopted]
 - b. The expertise, training, education, experience, and skill of the Professional in Title 14 proceedings;
 - c. Whether an appointment in a particular matter precluded other employment;
 - d. The character of the work to be done, including difficulty, intricacy, importance, necessity, time, skill or license required, or responsibility undertaken;
 - e. The conditions or circumstances of the work, including emergency matters (requiring urgent attention), services provided outside regular business hours, potential danger (e.g., hazardous materials, contaminated real property, or dangerous persons), or other extraordinary conditions;
 - f. The work actually performed, including the time actually expended, and the attention and skill-level required for each task, including whether a different person could have rendered better, faster or less expensive service;
 - g. The result, specifically whether benefits were derived from the efforts, and whether probable benefits exceeded costs;
 - h. Whether the Professional timely disclosed that a projected cost was likely to exceed the probable benefit, affording the court an opportunity to modify its order in furtherance of the best interest of the Estate.
 - i. The fees customarily charged and time customarily expended for performing like services in the community;
 - j. The degree of financial or professional risk and responsibility assumed;
 - k. The fidelity and loyalty displayed by the Professional, including whether the Professional put the best interest of the Estate before the economic interest of the Professional; and,
 - l. The “points of reference”, as set forth above.

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5. Non-traditional compensation arrangements.

- a. Flat-fee: Unless otherwise prohibited by law or rule, flat-fee compensation is permissible, and may include all or part of an engagement, if the predictability of costs is enhanced and if the economic interests of the Professional are thereby better aligned with the Estate.

The basis for any flat fee compensation shall be disclosed in advance, in writing, specifying in detail the services included in any flat-fee, the units of each service, and the usual hourly rate for such services. The actual delivery of services included with the flat fee shall be documented.

- b. Contingent fee: Unless otherwise prohibited by law or rule, nothing in these guidelines shall prohibit a contingent fee engagement with an attorney, properly executed in writing, e.g. representation on a personal injury claim.

Exhibit A for 2011

STATEWIDE FEE GUIDELINES for Assessing the Reasonableness of FIDUCIARY, GUARDIAN *AD LITEM*,
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This Exhibit shall be periodically updated by the Administrative Office of the Supreme Court, and an updated Exhibit A may be downloaded at www.azcourts.az.gov/...

	Hourly Professional Compensation Range			
	Minimum	Median	Average	Maximum
Attorney				
Fiduciary				
Guardian <i>ad Litem</i>				

Please note: the hourly rates reported in Exhibit A are compiled by the Administrative Office of the Supreme Court as a point of reference on estimated current market rates among Professionals, based upon currently available information. These rates are non-binding on the parties, Professionals or the Court, but are informative and persuasive as a point of reference in determining reasonable compensation.